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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
TOTEM OCEAN TRAILER EXPRESS,
INC., (S.S. Great Land),

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 82-16

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal from the issuance of a \$250.00 civil penalty for the alleged violation of Section 9.03(b) of Regulation I, came before the Pollution Control Hearings Board, Nat W. Washington, presiding, and Gayle Rothrock, Member, at a formal hearing at Seattle-Tacoma International Airport, Seattle, Washington, on April 26, 1982.

Appellant was represented by its Marine Manager, Richard W. Griffith; respondent was represented by its attorney Keith D. McGoffin.

Having heard the testimony, having examined the exhibits, and

1 having considered the contentions of the parties, the Board makes these

2 FINDINGS OF FACT

3 I

4 Pursuant to RCW 43.21B.260, respondent has filed with the Board a
5 certified copy of its Regulation I and amendments thereto, which are
6 noticed.

7 II

8 On December 30, 1982, at about 9:00 a.m., respondent's inspector
9 noticed a tannish-white colored plume rising from appellant's ship
10 S.S. Great Land, in the Port area of Tacoma. After positioning
11 himself, he observed the plume which was coming from the stack of the
12 ship, and recorded opacities ranging from 40 to 100 percent for more
13 than three consecutive minutes. After discussing the matter with the
14 captain of the ship, the inspector issued a Notice of Violation.
15 Respondent sent to appellant by certified mail Notice and Order of
16 Civil Penalty of \$250.00 for the alleged violation of Section 9.03 of
17 respondent's Regulation I. The Notice and Order of Civil Penalty is
18 the subject of the instant appeal.

19 III

20 Section 9.03 of respondent's Regulation I makes it unlawful for
21 any person to cause or allow the emission of any air contaminant for a
22 period totaling more than three minutes in any one hour which is of an
23 opacity equal to or greater than 20 percent.

24 Section 3.29 of Regulation I provides for a civil penalty of up to
25 \$250.00 per day for each violation of Regulation I.

26
27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
PCHB No. 82-16

IV

The captain of the S.S. Great Land, when talked to by the inspector, stated that the excess smoke had been caused by startup; however, the records of respondent do not show that any startup or breakdown call was received from appellant on December 30, 1981.

The marine manager of appellant testified that he called respondent to report the startup of S.S. Great Land at about 6:00 a.m. on December 30, 1981. At that time of day the call would have been taken by respondent's answering service. From his testimony it appears that although he was not accustomed to making such calls, he did make a very short call that morning to report the startup. He emphasized the brevity of his call. From his description of his very brief telephone call, it does not appear that he substantially complied with Section 9.16 which sets forth the nature of the information which is required to be given. (Nature of problem as well a time, date, duration and anticipated influence on emissions from the source.)

We conclude that the manager did make a call, but due to his inexperience and haste, he did not give sufficient information to the person answering the telephone at respondent's answering service for that person to realize that he was attempting to make a start-up report. We conclude that in the ordinary course of business, that respondent's answering service would have recorded and reported the manager's call as a start-up call if he had taken the time to properly identify himself and give the required information.

1 IV

2 Any Conclusion of Law which should be deemed a Finding of Fact is
3 hereby adopted as such.

4 From these Findings the Board comes to these

5 CONCLUSIONS OF LAW

6 I

7 Appellant violated Section 9.03(b) of Regulation I as alleged on
8 December 30, 1981, by allowing or causing an air emission of smoke in
9 excess of the limits established by the regulations.

10 II

11 Appellant did not substantially comply with Section 9.16 in its
12 attempt to report the start-up problem and is therefore liable for the
13 emission which exceeded the limits established by Section 9.03(b).

14 III

15 Since appellant did make a sincere effort to comply with Section
16 9.16, a substantial portion of the penalty should be suspended.

17 IV

18 Any Finding of Fact which should be deemed a Conclusion of Law is
19 hereby adopted as such.
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1 From these Conclusions the Board enters the following

2 ORDER

3 The \$250.00 civil penalty (No. 5384) is affirmed but \$150.00
4 thereof is suspended on the condition that appellant not violate any
5 respondent's regulations for a period of two years.

6 DATED this 9th day of June, 1982.

7 POLLUTION CONTROL HEARINGS BOARD

8
9 
10 NAT W. WASHINGTON, Chairman

11 
12 GAYLE ROTHROCK, Vice Chairman